UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

In the Matter of:

FORD MOTOR COMPANY

Respondent,

and Case No. 07-CA-198075

LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS (IOUE), AFL-CIO

Charging Party,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO and its LOCAL 245

Intervenors

RESPONDENT'S EXCEPTIONS TO THE DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE DAVID I. GOLDMAN

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB"), Respondent Ford Motor Company ("Respondent") hereby files Exceptions to the Decision and Order ("Decision") of Administrative Law Judge David I. Goldman ("ALJ"), which issued in the above-captioned case on February 8, 2018. *See* JD-10-18. The specific grounds for these Exceptions are detailed in the contemporaneously-filed Respondent's Brief in Support of Exceptions to the Decision and Order ("Decision") of Administrative Law Judge David I. Goldman. Respondent excepts to the Decision as follows:

1. Decision p. 1, lines 1-3: The finding/conclusion that the instant case is "a successorship case involving a small group of skilled maintenance employees represented by the International Union of Operating Engineers Local 324."

2. Decision p. 2, lines 8-10: The finding/conclusion that Ford only "rehired four of the five incumbent skilled maintenance employees and also transferred in two additional Ford skilled workers from a United Auto Workers skilled trades local."
3. Decision p. 2, lines 18-20: The finding/conclusion that "without hiatus in operations" employees began "performing the same skilled maintenance for Ford that the predecessor's employees had performed, using the same tools, with the same building supervisors, and … working for the same customer, Ford."
4. Decision p. 2, lines 21-23: The finding/conclusion that Ford adopted a "business as usual" approach to the drivability testing facility ("DTF").
5. Decision p. 2, lines 24-25: The finding/conclusion that six months after "Ford assumed the operation, the employee complement remained the initial six individuals."
6. Decision p. 2, lines 31-33: The finding/conclusion Ford was a "successor employer."
7. Decision p. 2, lines 33-37: The finding/conclusion that Ford "commenced normal operations of the DTF maintenance work with what was … a substantial and representative complement of employees."
8. Decision p. 2, lines 35-37: The finding/conclusion that the six employees assigned to the DTF constituted a "longstanding and still appropriate unit."
9. Decision p. 2, lines 35-37: The finding/conclusion that Ford was required to recognize and bargain with IUOE Local 324.
10. Decision p. 3, lines 31-32: The finding/conclusion that, since 2010, Ford was "likely the exclusive customer" of the DTF.
11. Decision p. 3, footnote 2: The decision to permit the General Counsel to amend "para. 9 of the complaint to add general maintenance work to the description of the alleged appropriate bargaining unit."
12. Decision p. 3, footnote 2: The finding/conclusion that "neither the UAW nor Ford was prejudiced in any way by the amendment."

13. Decision p. 4, lines 33-34: The finding/conclusion that "[t]hese five employees composed the maintenance department at DTF and performed preventative and other needed maintenance work necessary for the day-to-day operations."
14. Decision p. 4, lines 35-37: The finding/conclusion that the IUOE employees performed "general maintenance work that could range from drywall repair to adjusting room temperatures, even painting and plumbing."
15. Decision p. 5, footnote 4: The finding/conclusion that Ford's responses to UAW information requests are "hearsay."
16. Decision p. 6, footnote 5: The finding/conclusion that there are numerous buildings "within the geographic 4-mile radius containing the R&E center facilities that are Ford Land owned, but have their maintenance performed by other local unions, including IUOE Local 324."
17. Decision p. 7, footnote 6: The implication that Ford was not required to follow the contractually-required hiring prerequisites noted by UAW Representative Vergari.
18. Decision p. 7, lines 27-28: The finding/conclusion that "the record is clear that the employees did not fully understand the bumping and seniority rules."
19. Decision p. 7, lines 29-31: The finding/conclusion that "Peters…was told by Vergari …that the employees at DTF would have 1 year of site security."
20. Decision p. 7, lines 29-32: The finding/conclusion that Peters and Miller "understood" that employees "would not be subject to being bumped out of that building for a year."
21. Decision p. 7, lines 34-37: The finding/conclusion that John Kurzawa told Vergari that "he found it kind of odd that two affiliated unions[,] that one would try to do this to another one."
22. Decision p. 7, lines 34-37: The finding/conclusion that Vergari told Kurzawa that "well, it's not like we're trying to do work over at Best Buy or something like that."
23. Decision p. 8, lines 34-41: The finding/conclusion that Ford only staffed DTF with six employees.

24. Decision p. 8, lines 34-41: The finding/conclusion that Ford utilized the same staffing and job distribution that existed under Jacobs.
25. Decision p. 8, lines 43-45: The finding/conclusion that the new Ford employees attended an "orientation" rather than training.
26. Decision p. 8, lines 47-49: The finding/conclusion that three of the four DTF maintenance employees testified "credibly that…there was no change to their work"
27. Decision p. 8, lines 50-52: The finding/conclusion that Peters testified credibly that after the transition it was "the same work."
28. Decision p. 8, lines 50-52: The finding/conclusion that Miller testified credibly that "[n]othing's changed" and "[w]orking conditions as far as that are the same; I mean it's identical to what it was."
29. Decision p. 8, lines 50-52: The finding/conclusion that Kurzawa testified credibly that [n]othing's changed to what it was" and that the "electrical work is all the same" and [n]othing's changed."
30. Decision p. 9, lines 10-12: The finding/conclusion that the "rehired employees continued to perform walkthroughs to monitor equipment and remained responsible for all areas of the three-story building."
31. Decision p. 9, lines 12-13: The finding/conclusion that the rehired employees "continued to work on maintaining and repairing the building's equipment and they continued assisting each other as they had before the transition."
32. Decision p. 9, lines 15-16: The finding/conclusion that the "continuity between the predecessor's work process and the current work process was openly discussed and encouraged by Ford officials."
33. Decision p. 9, lines 16-18: The finding/conclusion that "Ford's Site Superintendent Eric Gerling told SSE Miller and Electrician Kurzawa that their duties would remain the same after the transition to Ford as they had before the transition."

34. Decision p. 9, lines 22-24: The finding/conclusion that "Gerling, seconded by Sirhan, told them 'It's business as usual; just do your job like you always have."

35. Decision p. 9, lines 23-24: The finding/conclusion that "Gerling told Miller that 'they wanted other UAW members to start working more like [the IUOE].'"

36. Decision p. 9, lines 26-31: The finding/conclusion that Gerling and Miller were told that they "were to do things business as usual, that [Ford] wanted things to operate more like us over at the R&E center and they don't want us operating like the R&E center."

37. Decision p. 9, lines 35-41: The finding/conclusion that Peters was instructed to follow the Launch Agreement and conduct "business as usual."

38. Decision p. 10, lines 4-7: The finding/conclusion that Peters was told to follow Jacobs' "specs" rather than Ford's.

39. Decision p. 10, lines 24-26: The finding/conclusion that Ford "conditioned recognizing the UAW as the bargaining representative on the agreement that Ford would not have to operate the DTF on the model and with the work rules in effect at other Ford-UAW Local 245 facilities."

40. Decision p. 10, lines 35-44: The implication that the quoted language from the letter of understanding between Ford and the UAW stands for the proposition that Ford wanted the UAW to retain Jacobs' operational parameters, policies, or specifications.

41. Decision p. 11, lines 5-20: The implication that the Launch Agreement, including but not limited to the quoted text, stood for the proposition that Ford wanted the UAW to retain Jacobs' operational parameters, policies, or specifications.

42. Decision p. 11, lines 45-46: The finding/conclusion that "throughout the period after the transition, no additional or new skilled trades employees have been regularly assigned to work at the DTF."

43. Decision p. 11, line 48: The finding/conclusion that "the use of outside of contractors coming to DTF to perform work has continued."

44. Decision p. 12, lines 5-20: The implication that Ford was not intent on bringing the total number of DTF assigned employees to a total of 10 by the end of 2017.
45. Decision p. 12, lines 24-26: The finding/conclusion that Vergari's testimony that the "majority" of work that was formerly contracted out by Jacobs is now being performed by UAW members is not supported by the record.
46. Decision p. 12, lines 28-31: The finding/conclusion that Local 245 employees from outside the DTF only worked at the DTF during two emergencies and one survey assignment.
47. Decision p. 12, lines 31-36: The finding/conclusion that Local 245 employees from outside the DTF only worked at the DTF sporadically.
48. Decision p. 13, lines 8-25: The implication that Ford was not diligent in training UAW Local 245 members on the systems at the DTF.
49. Decision p. 14, lines 4-6: To the quoted text and pinpoint citation, to the extent the ALJ analogizes this case to the distinguishable case of *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 720 (2001).
50. Decision p. 15, lines 20-24: The finding/conclusion that "Ford's obligation to recognize and bargain with the IUOE Local 324 turns on whether a majority of its employees in an appropriate bargaining unit were employed by the predecessor, and if there exits substantial continuity between the enterprises."
51. Decision p. 15, lines 43-45: The finding/conclusion that the proper analysis in this case does not involve an analysis of the overall companies involved.
52. Decision p. 15, lines 49-53: The finding/conclusion that the employees' understanding is the primary consideration in determining substantial continuity.
53. Decision p. 16, lines 6-7: The finding/conclusion that the "continuity between Ford's DTF maintenance support and Jacobs' maintenance support at DTF is more than substantial."
54. Decision p. 16, lines 7-9: The finding/conclusion that the "with regard to maintenance at the DTF, on April 24, 2017, Ford assumed and 'continued, without interruption or substantial change,

the predecessor's business operations' providing the skilled and general maintenance to the DTF facility." (internal quotation omitted).

55. Decision p. 16, lines 12-15: The finding/conclusion that the three DTF employees who testified, testified credibly that their work had not changed significantly since becoming Ford employees.
56. Decision p. 16, lines 14-16: The finding/conclusion that the work at the DTF remained the same after assumption of the facility by Ford.
57. Decision p. 16, line 26: The finding/conclusion that either Ford or UAW were audacious during the course of this case.
58. Decision p. 16, lines 20-24: The finding/conclusion that if a new employer does not implement immediate change, the employer loses the ability to argue that the employer is not a successor.
59. Decision p. 16, lines 26-33: The finding/conclusion that the Launch Agreement necessitates a finding of successorship.
60. Decision p. 16, lines 26-33: The finding/conclusion that Ford put a "fence" around the DTF or instructed employees to conduct "business as usual."
61. Decision p. 16, lines 35-37: The finding/conclusion that anticipated changes or future changes cannot support a finding that an employer is not a successor.
62. Decision p. 16, lines 41-46: The finding/conclusion that Ford's utilization of UAW members to perform work at the DTF is no different than Jacobs utilization of outside contractors.
63. Decision p. 16, lines 45-50: The finding/conclusion that Ford's utilization of UAW members to perform work at the DTF "does not alter the working life of the DTF-assigned employees, or provide them with interchange that comes even close to altering their worklife in a manner that is reasonably likely to change their views on union representation, much less merge their identify [sic] with Local 245 tradesperson from outside the DTF."
64. Decision p. 17, lines 1-9: To the finding/conclusion that Kurzawa's work changed after the transition to Ford only because of a change in the staffing levels.

65. Decision p. 17, lines 10-14: To the finding/conclusion that "the continued community-of-interest of the six maintenance employees assigned to the DTF is readily and obviously distinguishable from any separate community of interest shared by mobile Local 245 tradesman who travel throughout the R&E center's 58 buildings and only occasionally come into the DTF to perform specific assignments."

66. Decision p. 17, lines 16-19: To the conclusion that Ford's and the UAW's arguments "do not add up to much, and [] cut against the UAW/Ford position."

67. Decision p. 17, lines 21-37: To the cited cases to the extent they are being cited as analogous to the present case.

68. Decision p. 17, lines 39-46: To the implication that a single plant or unit in this case is required by the cited decisions.

69. Decision p. 18, lines 1-2: To the finding/conclusion that "little to nothing that has changed…would overcome the weight attached to the fact that this essentially unchanged unit has a long history of collective-bargaining as a standalone unit."

70. Decision p. 18, lines 6-10: To the finding/conclusion that Ford's centralized supervision and human resources function is irrelevant to the successorship or appropriate unit inquiry.

71. Decision p. 18, lines 15-24: To the finding/conclusion that *Jerry's Chevrolet*, 344 NLRB 689 (2005) is inapposite.

72. Decision p. 18, lines 15-24: To the finding/conclusion that an existing multi-facility with geographically proximate facilities is insufficient to rebut the single-site presumption.

73. Decision p. 18, lines 35-36: To the finding/conclusion that DTF remained a "distinctive unit set apart by work skills and ability."

74. Decision p. 18, lines 38-42: To the finding/conclusion that Ford and the UAW's arguments that the General Counsel gerrymandered the bargaining unit miss the point.

75. Decision p. 18, lines 45-47: To the finding/conclusion that Ford "chose to replicate" Jacobs' historic work arrangement.

76. Decision p. 18, lines 48-51: To the finding/conclusion that UAW Local 245 workers and outside contractors are synonymous.

77. Decision p. 18, lines 48-51: To the finding/conclusion that the use of UAW Local 245 workers in the DTF does not undermine the appropriateness of the unit selected by the General Counsel.

78. Decision p. 18, lines 48-51 through p. 9, lines 1-2: To the finding/conclusion that the use of UAW Local 245 workers in the DTF underscores the "continued appropriateness of the unit from the perspective of the employees."

79. Decision p. 19, lines 4-19: To the finding/conclusion that Ford's argument that the difference in wording between the unit recognition in the in IUOE recognition letter and the General Counsel's alleged unit description is "make-weight," and the General Counsel is reasserting the historically-recognized bargaining unit.

80. Decision p. 20, lines 6-9: To the finding/conclusion that "there is no serious case to be made that there is not substantial continuity between the DTF maintenance operation under Jacobs and under Ford."

81. Decision p. 20, line 9: To the finding/conclusion that "[t]he DTF unit remains an appropriate one."

82. Decision p. 20, lines 17-24: To the finding/conclusion that Ford and the UAW's appropriate unit argument based on the integration of the DTF to larger R&E operations is "meritless…speculative and self-serving."

83. Decision p. 20, lines 17-24: To the finding/conclusion that "there is no concrete plan to merge the DTF into a wider unit."

84. Decision p. 20, lines 26-37: To the finding/conclusion that an employer who takes time with a business transition and attempts to minimize disruption to operations and employees loses the ability to argue against successorship.

85. Decision p. 21, lines 1-5: To the implication that Ford made a "'conscious decision to maintain generally the same business and hire a majority of its employees from the predecessor' in order 'to take advantage of the trained work force of its predecessor.'"

86. Decision p. 21, lines 6-13: To the finding/conclusion that accretion is only appropriate under Board law, including without limitation *E.I. Du Pont Inc*., 341 NLRB 607 (2004) and *Ready Mix USA, Inc*. 340 NLRB 946 (2003) if the "existing bargaining unit [has] little or no separate identity and [shares] an overwhelming community of interest with the preexisting unit to which they are accreted."

87. Decision p. 21, lines 12-13: To the finding/conclusion that "the successorship analysis finding that the historic DTF unit remains appropriate, leaves no room for a viable claim that the DTF unit has been accreted into a larger R&E Center unit."

88. Decision p. 21, footnote 15: To the finding/conclusion that the accretion claim must be decided as of April 24, 2017.

89. Decision p. 22, lines 20-22: To the finding/conclusion that "the record overwhelmingly supports the conclusion that Ford is a successor to Jacobs and that the long-recognized stand-alone DTF maintenance unit remains an appropriate unit for bargaining."

90. Decision p. 23, lines 23-25: To the finding/conclusion that Ford "commenced normal operations of the DTF" when it commenced operations with six employees.

91. Decision p. 23, lines 26-28: To the finding/conclusion that "Ford's duty to recognize and bargain with the IUOE Local 324 attached on April 24" and that "Ford violated the Act when it refused to recognize and bargain with the IUOE on April 24."

92. Decision p. 23, lines 30-45: To the finding/conclusion that Ford's arguments that the appropriate unit at DTF is larger than six employees is not "compelling."

93. Decision p. 23, lines 42-45: To the finding/conclusion that the UAW Local 245 members do not constitute members of the alleged and appropriate unit and "do not undermine the continued

appropriateness of the standalone unit composed of the employees permanently assigned to work at the DTF."

94. Decision p. 24, lines 1-11: To the finding/conclusion that Ford is in error that the six employees assigned to DTF do not "constitute a substantial and representative complement, sufficient under *Fall River Dyeing* to assess the composition of the work force."

95. Decision p. 24, lines 11-20: To the finding/conclusion that six employees "constitute a substantial and representative complement."

96. Decision p. 25, lines 22-24: To the finding/conclusion there was "at a minimum" a "substantial and representative complement."

97. Decision p. 26, Conclusion of Law 3: To the conclusion that the provided bargaining unit definition is appropriate under the Act.

98. Decision p. 26, Conclusion of Law 4: To the conclusion that the Charging Party has been the exclusive bargaining unit representative of the employees since April 24, 2017.

99. Decision p. 26, Conclusion of Law 5: To the conclusion that Responded violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain collectively with the Charging Party Union.

100. Decision p. 27, lines 1-25: The entirety of the ALJ's "Remedy," including but not limited to Respondent's affirmative requirements to "recognize and, upon request, bargain with the Charging Party Union as the collective-bargaining representative of an appropriate bargaining unit of employees;" "refrain from in any like or related manner abridging any of the rights guaranteed to employees;" and "post an appropriate information notice."

101. Decision, p. 27, line 30 through Decision p. 28, line 36: The entirety of the ALJ's "Recommended Order," including but not limited to the cease-and-desist provisions in Paragraphs 1(a) – 1(b) and the affirmative action provisions in Paragraphs 2(a) – 2(c).

102. Decision, at Appendix: The entirety of the proposed "Notice to Employees."

Dated: March 22, 2018

Respectfully submitted,

/s/ Richard S. Cleary

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2018 the foregoing was served via electronic filing to the National Labor Relations Board's Office of the Executive Secretary, located at 1015 Half Street SE, Washington, DC 20570-0001, with additional service copies sent as follows:

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